

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 08-10370
)	
THOMAS C. LINDSAY and)	Chapter 7
NICOLE D. LINDSAY,)	
)	
Debtors.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
STEVEN S. DAVIS, TRUSTEE,)	Adversary Proceeding No. 08-1215
)	
Plaintiff,)	
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
THOMAS C. LINDSAY, et al.,)	
)	
Defendants.)	

The plaintiff chapter 7 trustee filed a complaint to revoke the discharge of defendant-debtor Nicole Lindsay, asserting that Ms. Lindsay’s discharge should be revoked because she refused to comply with a court order to turn over funds to the trustee.¹ The trustee requests summary judgment against Ms. Lindsay.² For the reasons stated below, the trustee’s motion for summary judgment is granted.³

¹ Debtor Thomas Lindsay was also named as a defendant, but was subsequently dismissed.

² Docket 14.

³ This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered in this district by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

DISCUSSION

I.

Facts

These are the undisputed material facts based on the chapter 7 file and the evidence offered in connection with the trustee's summary judgment motion:

Debtors Nicole and Thomas Lindsay filed their chapter 7 petition on January 18, 2008 and received their discharge on April 28, 2008.⁴ On May 23, 2008, the court entered an order which required the debtors to turn over \$2,955.43 in non-exempt income tax refunds and cash to the trustee (the turnover order).⁵ The trustee's complaint in this adversary proceeding alleges that Nicole Lindsay failed to comply with the turnover order.⁶ Ms. Lindsay, who is represented by counsel, filed an answer in which she denied that she failed to obey the court's order.⁷ The trustee then filed a motion for summary judgment, to which Ms. Lindsay did not reply.⁸

⁴ Case No. 08-10370, docket 1, 12.

⁵ Case No. 08-10370, docket 17.

⁶ Docket 1.

⁷ Docket 8.

⁸ The case management scheduling order provides that the deadline for filing dispositive motions was October 14, 2008 and that briefs in opposition were due on or before October 24, 2008. (Docket 10). The deadline for filing opposition to the trustee's motion has, therefore, passed.

II.

Summary Judgment Standard

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c) (made applicable by FED. R. BANKR. P. 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. The burden is then on the nonmoving party to show the existence of a material fact which must be tried. *Id.* at 324. The nonmoving party “may not rest upon the mere allegations or denials of the [nonmoving] party’s pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Further, the nonmoving party may not satisfy this burden by relying on unsworn affidavits. *Id.*; *Pollock v. Pollock*, 154 F.3d 601, 611 n.20 (6th Cir. 1998). All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. Am. Eng’g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). The issue at this stage is whether there is evidence on which a trier of fact could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989).

III.

Revocation of Discharge

The court may revoke the discharge of a chapter 7 debtor if the debtor refuses to obey a lawful order of the court. Bankruptcy code § 727(d)(3) provides that:

(d) On request of the trustee . . . and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if— . . . (3) the debtor committed an act specified in subsection (a)(6) of this section[.]

11 U.S.C. § 727(d)(3). In turn, subsection (a)(6) of § 727 provides that a debtor’s discharge shall be denied when the debtor “has refused ... to obey any lawful order of the court, other than an order to respond to a material question or to testify[.]” 11 U.S.C. § 727(a)(6)(A).

In the case of a revocation of discharge, a court may construe a debtor’s failure to comply with a lawful order of the court as refusal to comply with that order. A debtor will be deemed to have “refused” to obey a court’s order when the debtor’s actions or inactions would give rise to liability on a charge of civil contempt. *Hunter v. Watson (In re Watson)*, 247 B.R. 434, 436 (Bankr. N.D. Ohio 2000) (citing *Hunter v. Magack (In re Magack)*, 247 B.R. 406 (Bankr. N.D. Ohio 1999)). To establish civil contempt, three elements must be shown by clear and convincing evidence: (1) the alleged contemnor had knowledge of the order which he is said to have violated; (2) the alleged contemnor did in fact violate the order; and (3) the order violated must have been specific and definite. *See id.* at 436 (citing *Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998)).

IV.

The Summary Judgment Motion

In this case, debtor Nicole Lindsay’s failure to comply with the May 23, 2008 turnover order satisfies the three-prong standard for civil contempt. First, the court record shows that the debtor and her counsel were served with the order.⁹ Second, the trustee affirms that the debtor

⁹ Case No. 08-10370, docket 18.

has failed to comply with the order.¹⁰ As willfulness is not an element of civil contempt, the trustee need not show that the debtor willfully disobeyed the order, only that she knew of the order and failed to follow it. *TWM Mfg. Co., Inc. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983). And third, the order stated with specificity that the debtor was to turn over \$2,955.43 to the trustee. Therefore, by failing to comply with the turnover order, debtor Nicole Lindsay has refused to comply with a lawful order of this court. *See Hunter v. Watson*, 247 B.R. at 436; *see also Sicherman v. Skiljan (In re Skiljan)*, 355 B.R. 642, 643- 44 (Bankr. N.D. Ohio 2006). This refusal satisfies the requirements of § 727(d)(3), and revocation of the debtor's discharge under that provision is appropriate. Viewing all the evidence before the court in a light most favorable to the debtor, no trier of fact could reasonably find in Ms. Lindsay's favor. Accordingly, the trustee is entitled to summary judgment. *See Hunter v. Watson*, 247 B.R. at 436; *see In re Skiljan*, 355 B.R. at 644.

CONCLUSION

A separate judgment will be entered granting the trustee's motion for summary judgment and revoking debtor Nicole Lindsay's discharge.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

¹⁰ *See* trustee's affidavit, docket 14.

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For the reasons stated in the memorandum of opinion filed this same date, the plaintiff-trustee's motion for summary judgment is granted. (Docket 14). As a result, the plaintiff is granted judgment under 11 U.S.C. § 727(d)(3) against defendant-debtor Nicole Lindsay and Ms. Lindsay's discharge is revoked.

IT IS SO ORDERED.

A handwritten signature in black ink that reads 'Pat E. Morgenstern-Clarren'.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge